

### REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed February 5, 2007. Upon entry of this response, claims 2-11, 13-38, 40-59, and 61-66 are pending in the application. In this response, claims 2-11, 13-23, and 33 have been amended, and claims 1 and 12 have been cancelled. Applicant requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

#### 1. Allowable Subject Matter

Applicant appreciates the Examiner's allowance of claims 40-59 and 61-66. Applicant also acknowledges the Examiner's indication in the Office Action that claims 11, 22, 25-26, 29-32, and 35-38 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Independent claims 11 and 22 are amended to include the limitations of their respective base claims, such that claims 11 and 22 are now independent claims. Dependent claims 2-10 and 13-21 are amended to depend from now independent claim 11 and 22, and are therefore allowable as a matter of law for at least the reason that the dependent claims 2-10 and 13-21 contain all features of independent claim 11 and 22. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the Examiner is respectfully requested to place claims 2-11 and 13-22 in condition for allowance.

Applicant wishes to clarify that the amendments to claims 11 and 22 are made for purposes of presenting the claims in an independent claim format as requested by the Examiner, and not in response to any rejections made based on cited art. Because a dependent claim as a matter of law inherently contains all of the limitations of its respective parent independent claim, and any intervening claims, the amendments to claims 11 and 22 do not narrow the scope of claims 11 and 22 as originally filed.

2. Rejection of Claims 1-7, 12-18, 23-24, 27-28, and 33-34 under 35 U.S.C. §102

Claims 1-7, 12-18, 23-24, 27-28, and 33-34 have been rejected under §102(e) as allegedly anticipated by *Jones et al.* (U.S. 6,904,082). Independent claims 1 and 12 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicant takes this cancellation action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of these cancelled claims in a continuing application, if Applicant so chooses, and does not intend to dedicate any of the cancelled subject matter to the public. Applicant expressly reserves the right to present cancelled claims 1 and 12, or variants thereof, in continuing applications to be filed subsequent to the present application.

As noted above, claims 2-7 and 13-18 are amended to depend from allowable (and now independent) claims 11 and 22 respectively. Since claims 11 and 22 are allowable, Applicant submits that claims 2-7 and 13-18 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant requests that the rejection of claims 2-7 and 13-18 be withdrawn.

Independent claim 23 is amended to recite “the transmitting means comprising: means for setting a fixed lower corner frequency to enable communications to occur on a portion of a communication spectrum not used by another coexisting application to enable line sharing functionality; means for determining a center frequency  $f_c$  as the fixed lower corner frequency plus half the sum of a baud rate and an excess bandwidth; and means for operating a signal in a lower end of the communication spectrum wherein signal loss and crosstalk are reduced.” Applicant submits that *Jones et al.* does not disclose, teach, or suggest these features. Therefore, claim 23 is allowable and the rejection of claim 23 should be withdrawn. Since claim 23 is allowable, Applicant submits that dependent claims 24-32 are allowable for at least the

reason that each depends from an allowable claim, and the rejection of claims 24-32 should be withdrawn.

Independent claim 33 is amended to recite “the receiving means comprising: means for setting a fixed lower corner frequency to enable communications to occur on a portion of a communication spectrum not used by another coexisting application to enable line sharing functionality; means for determining a center frequency  $f_c$  as the fixed lower corner frequency plus half the sum of a baud rate and an excess bandwidth; and means for operating a signal in a lower end of the communication spectrum wherein signal loss and crosstalk are reduced.”

Applicant submits that *Jones et al.* does not disclose, teach, or suggest these features.

Therefore, claim 33 is allowable and the rejection of claim 33 should be withdrawn. Since claim 33 is allowable, Applicant submits that dependent claims 34-38 are allowable for at least the reason that each depends from an allowable claim, and the rejection of claims 34-38 should be withdrawn.

3. Rejection of Claims 8-10 and 19-21 under 35 U.S.C. §103

Claims 8-10 and 19-21 have been rejected under §103(a) as allegedly obvious over *Jones et al.* (6,904,082). Applicant respectfully traverses this rejection. Since independent claims 12 and 22 are allowable, Applicant submits that claims 8-10 and 19-21 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant requests that the rejection of claims 8-10 and 19-21 be withdrawn.

**CONCLUSION**

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 2-11, 13-38, 40-59, and 61-66 be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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